

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 3, 1999

IN RE:

**PETITION BY ICG TELECOM GROUP, INC. FOR
ARBITRATION OF AN INTERCONNECTION
AGREEMENT WITH BELL SOUTH
TELECOMMUNICATIONS, INC. PURSUANT TO
SECTION 252(b) OF THE TELECOMMUNICATIONS
ACT OF 1996**

**DOCKET NO.
99-00377**

**ORDER APPROVING REPORT AND INITIAL ORDER OF
PRE-ARBITRATION OFFICER**

On October 12, 1999, at a specially scheduled Pre-Arbitration Conference, the Directors of the Tennessee Regulatory Authority, acting in their capacity as Arbitrators, considered the September 13, 1999 Report and Initial Order of the Pre-Arbitration Officer ("Report"). The Arbitrators also considered exceptions to the Report filed by BellSouth Telecommunications, Inc. ("BellSouth") on September 23, 1999, and the response thereto filed by ICG Telecom Group, Inc. ("ICG") on September 23, 1999. In its filing, BellSouth took exception with the Pre-Arbitration Officer's Initial Order to arbitrate Issue Nos. 3, 5, 6 and 19 through 26. The Arbitrators provided the parties with the opportunity to present oral argument concerning BellSouth's exceptions. After carefully reviewing the Report, the exceptions and reply thereto, as well as the oral arguments of the parties, the Arbitrators found that at this stage in the proceeding, it is premature to rule that these issues are not arbitrable. The Arbitrators then voted unanimously to adopt and approve

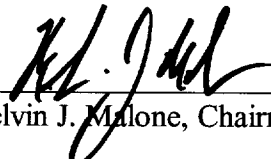
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the Report as filed and to deny the exceptions filed by BellSouth.


IT IS THEREFORE ORDERED THAT:

1. The exceptions filed by BellSouth Telecommunications, Inc. on September 23, 1999 to the Report and Initial Order of the Pre-Arbitration Officer are denied; and
2. The Report and Initial Order of the Pre-Arbitration Officer filed on September 13, 1999, attached to this Order as Exhibit A, is approved and is incorporated in this Order as if fully rewritten herein.

**TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS ARBITRATORS**



Melvin J. Malone, Chairman



H. Lynn Greer, Jr., Director



Sara Kyle, Director

ATTEST:



K. David Waddell, Executive Secretary

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 13, 1999

IN RE:)	
)	
PETITION BY ICG TELECOM GROUP, INC.)	
FOR ARBITRATION OF AN INTERCONNECTION)	
AGREEMENT WITH BELL SOUTH)	DOCKET NO.
TELECOMMUNICATIONS, INC. PURSUANT)	99-00377
TO SECTION 252(b) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	
)	

REPORT AND INITIAL ORDER OF PRE-ARBITRATION OFFICER

On May 27, 1999, ICG Telecom Group, Inc. ("ICG") filed a Petition for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Section 252(b) of the Telecommunications Act of 1996. BellSouth filed a Response to ICG's petition on June 21, 1999. At a specially scheduled Authority Conference on June 29, 1999, the Directors unanimously accepted this petition for arbitration, appointed themselves as Arbitrators, and directed the General Counsel to either serve as or to designate a pre-arbitration officer.

On July 15, 1999, a Notice scheduling a Pre-Arbitration Conference for July 20, 1999 was sent to both parties. Because both parties were involved in similar arbitration proceedings in other southeastern states, ICG requested and BellSouth agreed to postpone the conference for a month. On August 16, 1999, a Notice of Pre-Arbitration Conference was sent to both parties; such conference was scheduled for Wednesday, August 25, 1999. Attached to this Notice of August 16 was an "issues matrix" which included all issues from the arbitration petition as well

as questions of clarification prepared by staff of the Telecommunications Division ("Staff") of the Tennessee Regulatory Authority ("TRA").

Pre-Arbitration Conference

The Pre-Arbitration Conference was held on August 25, 1999 before Gary Hotvedt, Counsel, designated as Pre-Arbitration Officer. Appearances were as follows:

For ICG: Henry Walker, Esq.; Albert H. Kramer, Esq.; Bruce Holdridge

For BellSouth: A. Langley Kitchings, Esq.; Mary Jo Peed, Esq.; E. Stuart Hudnall

For TRA Staff: Darlene Standley; Carsie Mundy.

At the start of the Conference, the Pre-Arbitration Officer ("PAO") reaffirmed that this proceeding is not a "contested case" as defined by the Uniform Administrative Procedures Act ("UAPA"), and as such, the UAPA does not control nor do parties have any appellate rights in state courts. Specifically, this is an arbitration pursuant to § 252(b) of the Federal Telecommunications Act of 1996, and any relief a party may seek must be via the FCC or the United States District Court. Nevertheless, the UAPA, the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence will be relied upon for guidance.

The following other procedural matters were discussed at the Conference, matters that the parties have subsequently agreed upon:

- a) Neither ICG nor BellSouth object to the participation of the TRA Staff during the Arbitration, including Staff directly asking questions during the proceeding itself;
- b) Both parties agree to abide by the arbitration rules proposed at the Conference (TRA Rules 1220-5-1 through 1220-5-3, Rules of Practice and Procedure Governing Proceedings under Section 252 of the Federal Telecommunications Act of 1996);

- c) The parties submitted a proposed Protective Order, which was approved by the PAO and entered on September 8, 1999; and
- d) On September 7, 1999, ICG and BellSouth jointly filed an agreement to extend the arbitration period until February 1, 2000.

Schedule

At the Conference, a tentative schedule was arrived at through agreement of the parties. Because the "issues and party's position matrix" was originally filed individually rather than jointly as requested by the Staff, and the latter dates for the proposed hearing have since been chosen by the parties, the PAO has modified that tentative schedule and hereby establishes the following schedule for the resolution of this docket:

September 13, 1999	Pre-Arbitration Officer's Report with adoption of issues
September 15, 1999	Discovery Requests due, if needed
September 20, 1999	Objections to Discovery Requests, if any
September 27, 1999	Discovery Responses due
October 12, 1999	Direct Testimony due
October 25, 1999	Rebuttal Testimony due
November 22 & 23, 1999	Arbitration Hearing

For filing purposes, all documents are to be faxed or hand-delivered by 4:30 PM on the day that they are due. Discovery requests will be limited to forty (40) requests, including sub-parts, although either party may seek leave from the Authority to serve additional discovery requests upon a showing of good cause.

Determination of Specific Issues

After considering the discussion relative to the specific issues at the Pre-Arbitration Conference, after reviewing the parties' briefs and issues matrix(s), and after weighing the analysis of Staff, the PAO determines that the following issues are arbitrable and are to be articulated as follows:

Issue 1: For the purposes of this agreement, should dial-up calls to Internet service providers ("ISPs") be treated as if they were local calls for purposes of reciprocal compensation?

Issue 3: Should BellSouth be required to make available as UNEs packet-switching capabilities, including but not limited to: (a) user-to-network interface ("UNI") at 56 kbps, 64 kbps, 128 kbps, 256 kbps, 384 kbps, 1.544 Mbps, 44.736 Mbps; (b) network-to-network interface ("NNI") at 56 kbps, 64 kbps, 1.544 Mbps, 44.736 Mbps; and (c) data link control identifiers ("DLCIs"), at committed information rates ("CIRs") of 0 kbps, 8 kbps, 9.6 kbps, 16 kbps, 19.2 kbps, 28 kbps, 32 kbps, 56 kbps, 64 kbps, 128 kbps, 192 kbps, 256 kbps, 320 kbps, 384 kbps, 448 kbps, 512 kbps, 576 kbps, 640 kbps, 704 kbps, 768 kbps, 832 kbps, 896 kbps, 960 kbps, 1.024 Mbps, 1.088 Mbps, 1.152 Mbps, 1.216 Mbps, 1.280 Mbps, 1.344 Mbps, 1.408 Mbps, 1.472 Mbps, 1.536 Mbps, 1.544 Mbps, [sic] Mbps, 3.088 Mbps, 4.632 Mbps, 6.176 Mbps, 7.720 Mbps, 9.264 Mbps, 10.808 Mbps, 12.350 Mbps, 13.896 Mbps, 15.440 Mbps, 16.984 Mbps, 18.528 Mbps, 20.072 Mbps? If so, what are the proposed rates?

Issue 4: Should a local loop combined with dedicated transport be provided as a UNE? If so, what is the proposed rate?

Issue 5: Should BellSouth be subject to liquidated damages or other concessions or remedies for failing to meet the time intervals for provisioning UNEs? If so, what level of damages, concessions or remedies are appropriate? What time intervals?

Issue 6: Should volume and term discounts be available for UNEs? Have specific volumes and terms for given items been identified? If so, what are they?

Issue 7: Should ICG be compensated for end office, tandem, and transport elements of termination, for purposes of reciprocal compensation, when ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch? If so, according to what schedule or what rate?

Issue 11: Should BellSouth commit to the requisite network buildout and necessary support when ICG agrees to a binding forecast of its traffic requirements in a specified period?

Issue 19: Should BellSouth be required to pay liquidated damages when BellSouth fails to install, provision, or maintain any service in accordance with the due dates set forth in an interconnection agreement between the Parties?

Issue 20: Should BellSouth continue to be responsible for any cumulative failure in a one-month period to install, provision, or maintain any service in accordance with the due dates specified in the interconnection agreement with ICG?

Issue 21: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the requirements imposed by the interconnection agreement with ICG (or the service is interrupted causing loss of continuity or functionality)?

Issue 22: Should BellSouth continue to be responsible when the duration of service's failure exceeds certain benchmarks?

Issue 23: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the grade of service requirements imposed by the interconnection agreement with ICG?

Issue 24: Should BellSouth continue to be responsible when the duration of service's failure to meet the grade of service requirements exceeds certain benchmarks?

Issue 25: Should BellSouth be required to pay liquidated damages when BellSouth fails to provide any data in accordance with the specifications of the interconnection agreement with ICG?

Issue 26: Should BellSouth continue to be responsible when the duration of its failure to provide the requisite data exceeds certain benchmarks?

Findings

Relative to Issue 1, the Pre-Arbitration Officer finds that pursuant to 47 USC § 251 (b)(5), matters related to reciprocal compensation are appropriate for arbitration.

Relative to Issue 3, the PAO finds that the rewording of this issue at the Conference was an expansion rather than a clarification of the issue as originally presented in the petition. 47 USC § 252 (b)(4)(A) limits the Arbitrators to consider the issues as presented, allowing for clarification but not for modification.

Relative to Issue 4, the PAO finds that 47 USC § 251 (c)(3) requires nondiscriminatory access to network elements, therefore, this issue is appropriate for arbitration.

Relative to Issue 5 and 19 - 26, the PAO finds that performance measures and liquidated damages are appropriate for arbitration, whereas financial incentives and other "penalties" are not.

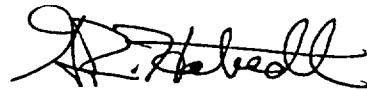
Relative to Issue 6, the PAO finds that although volume and term discount pricing is not required by the Act, neither is it precluded by the Act, and so it is appropriate for arbitration.

Relative to Issue 7, the PAO finds that FCC Rule 47 CFR § 51.711(a)(3) is controlling in this instance, hence, this issue is appropriate for arbitration.

Relative to Issue 11, the PAO finds that merely because the Act or the FCC rules do not require the commitment to a binding forecast, neither do they preclude it from arbitration.

IT IS THEREFORE ORDERED THAT:


1. The schedule as set forth in this Report is hereby adopted;
2. The issues as set forth in this Report are hereby adopted for arbitration;
3. Upon written motion, this Initial Order may be appealed to the Arbitrators within ten (10) days from its entry; and
4. If no party has appealed this Initial Order, after ten (10) days this Initial Order will become final.



Gary Hotvedt, Pre-Arbitration Officer

ENTERED: September 13, 1999

ATTEST:



K. David Waddell, Executive Secretary